IN THE HIGH COURT OF JUDICATAURE FOR RAJASTHAN AT JODHPUR.

—

ORDER.

Smt.Arunima Jain vs. The State of Raj. & ors.

S.B. Civil Writ Petition No.1293/2004

Under Article 226 of the Constitution of India

Date of Order: July 8th, 2005.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. Manoj Bhandari for the petitioner,

Mr. N.M. Lodha, Addl. Advocate General for the State.

Mr. M. Mridul, Sr. Advocate along with Mr. Sanjay Pareek for the respondents.

REPORTABLE

BY THE COURT:

(1) The Petitioner has grievance that as per the norms and guidelines prescribed by the National Council for Teachers Education (for short "the NCTE") the Commerce graduates are not eligible candidates for B.Ed. courses and therefore, they cannot be allowed to appear in Pre-Teacher Education Test (for short "the PTET") which is conducted for selection of

students for B.Ed. Course in Rajasthan. Earlier petitioner's stand was fully supported by the NCTE continuously for long period not only before petitioner's filling of present writ petition but even thereafter, in this writ petition itself. The NCTE also supported petitioner's prayer for interim relief and this Court directed the State Government to ensure that commerce graduates should not be allowed in PTET and should not be given admission to B.Ed. courses by any educational institute in Rajasthan. Thereafter, NCTE submitted that the NCTE was wrong. Therefore, matter is relating to fate of hundreds or even thousands of students and the matter is concerning with the functioning of National Level Statutory Autonomous Body (NCTE) which has been established to "achieve planned and coordinated development of teacher education system throughout the country and for overhauling the system of teacher education".

(2) This third round of litigation is because of the fact that the Chairman of the National Council for Teacher Education convinced the petitioner that the petitioner's grievance is just and proper and the norms and guidelines prescribed by the NCTE for teacher education are not being followed in the State of Rajasthan and particularly by the Jai Narain Vyas University (for short "the JNV University), Jodhpur despite the fact that the NCTE has been taking action from time to time for enforcement of the norms and

standard laid down by it for various teachers education programmes. The Chairman of the NCTE submitted an affidavit before this Court in second round of litigation, in Civil Misc. Contempt Petition No.6/2004 and informed this Court that the Council issued letters to all the Universities on 11.11.2003 including the JNV University, Jodhpur for taking appropriate steps for compliance of various aspects of the norms specially for admission of students (for teacher's training courses). The Chairman NCTE admitted that they knew it well that this Court in petitioner's earlier Writ Petition No.1085/2003 while disposing of the writ petition, directed the respondent-NCTE to examine the representation of the petitioner in right perspective. The Chairman, NCTE further admitted that the NCTE received copy of the representation of one Shri Jitendra Sharma of Shah Goverdhanlal Kabra College,Jodhpur, pointing out that norms and standards laid down by the NCTE are not being followed by the JNV University, Jodhpur and in turn, the NCTE requested the Government of Rajasthan to direct the JNV University, Jodhpur for holding Pre-Teacher Education Test (for short "the PTET"), 2004 strictly in accordance with the norms of the NCTE. The Chairman, NCTE further in his above affidavit specifically submitted that in compliance of the order of this Court dated 9.5.2003, the Northern Regional Committee of NCTE also, vide letter dated 19.5.2004, asked the Government of Rajasthan to

take action in the light of NCTE norms and standards and regulation as the JNV University, Jodhpur is not following the guidelines issued by the NCTE while taking the Pre-Teacher Education Test and copy of this letter has been endorsed to the Coordinator, NCTE and to the Vice Chancellor, JNV University, Jodhpur. Not only this but it has been stated on oath that the NCTE at the Head Quarter's level also directed Vice Chancellor, JNV University to take corrective measures with reference to PTET Test, 2004 within fortnight and also threatened, that failing which appropriate action will be taken by the NCTE, obviously against the JNV University, Jodhpur.

(3) When petitioner found, despite High Court's above order, practice of allowing the Commerce Graduates to get admission to the PTET and consequential to B.Ed. Course is sought to be continued by the coordinator for the PTET and he is not being restrained either by the State Government or by the NCTE, petitioner submitted contempt petition (No.56/2004) wherein affidavit was filed by Shri Shardindu, the Chairman, NCTE to convince this court that action is being taken by the NCTE, therefore, grievance of petitioner will not survive. By this affidavit, which has been submitted before this Court on 26.5.2004 in contempt proceeding, the Chairman, NCTE Shri Shardindu could obtain the order of dropping the contempt proceeding against all including himself.

(4) It will be worthwhile to quote the order of this Court passed in petitioner's earlier writ petition; S.B.Civil Writ Petition No. 1805/2003- dated 9th May 2003 and the order dated 27.7.2004 passed by this court in Contempt Petition No.56/2004.

"Order dt.9th May, 2003

"Heard.

The grievance as raised by the learned counsel for the petitioner is that Jai Narayan Vyas University which is conducting examinations for the entrance test of teachers training is not following the guidelines issued by the National Council for Teacher Education.

It would be advisable, if the petitioner approaches NCTE itself, because NCTE is a statutory body having enough teeth to implement its policy. That being the position, no interference by this court is called for.

Any representation made on behalf of the petitioner will be taken up by the NCTE and examine in right perspective. With these observations, the writ petition is disposed of." (emphasis supplied)

Order in contempt petition No. 56/2004 dt. 27 May, 2004:-

"Heard learned counsel for the petitioner.

It is not in dispute that the petitioner has approached the NCTE. As contemplated by the order dt. 9.5.2003 rather even according to the petitioner the

> NCTE is said to have issued necessary instructions to the University. The submission of the petitioner is that those instructions are not being followed by the University.
>
> In that view of the matter, I am not inclined to initiate any contempt proceedings for the alleged non-compliance of the order of this Court dt. 9.5.2003, what other remedy the petitioner has, is not for me to say. The contempt proceedings are, therefore, dropped and the notices are discharged."(Emphasis supplied)"

(5) Even after such an assurance before the High Court, that too from not less than a person, Chairman of NCTE when petitioner again found the practice of allowing the Commerce Graduates to get admission to the PTET test and consequential to B.Ed. Course is sought to be continued by the coordinator for the PTET and he is not being restrained either by the state government or by the NCTE, as stated above the petitioner preferred this writ petition.

(6) All the documents, namely, communication dated 14.11.2003, sent to 12 Universities (as per the list annexed along with the communication dated 24.1.2003 (Annx. R/1 in Contempt petition No 56/2004) directing to ensure the compliance of the norms and standards laid down by the NCTE for various teachers education programmes, the letter dated 27.2.2004 addressed to Shri B.N. Sharma, Secretary, Primary and Secondary Education, Government of Rajasthan and copy

endorsed to Dr. Jitendra Sharma, the letter dated 19.5.2004 by the Northern Regional Committee of NCTE addressed as Urgent, to Shri B.N. Sharma, copy of which was endorsed to the petitioner and Dr. Jitendra Sharma and by letter of Member, Secretary addressed to the Vice Chancellor, JNV University, Jodhpur from the apex body of the NCTE and endorsed to the Regional Director, NCTE were the documents by which it was projected that the petitioner is right in raising her objection against giving admission to the commerce graduates to the course of B.Ed. by permitting them to appear in the admission test known as Pre-Teacher Education Test (PTET). By the affidavit of the Chairman of NCTE and by these documents, this Court was made to believe that the NCTE has issued necessary instructions to not only the JNV University, Jodhpur but to several other Universities. It was projected that still the JNV University Jodhpur is not following the instructions of the NCTE but since NCTE is taking action, therefore, the contempt proceeding initiated against Coordinator of the PTET Examination (Registrar, JNV University, Jodhpur) and the Chairman of the NCTE and against the Education Secretary, Government of Rajasthan, was dismissed and the proceedings were dropped by this Court by order dated 27.7.2004, quoted above, despite the fact that this Court on 25.3.2004 issued notice not only for initiation of the contempt proceedings but issued notice to the

respondents to show cause as to why they should not be punished for committing contempt of this Court's order.

(7) In the backdrop of these facts, the petitioner had no reason to believe that all what has been said by the NCTE at regional level and at their apex level, did not apply their mind to the point in controversy and they not only wrote letters to the Universities and the State Government and even went to the extent of declaring that the JNV University, Jodhpur has violated the norms and standards laid down by the NCTE and if the said University will not correct within fortnight, the action will be taken by the NCTE. In addition to above, the NCTE by letter dated 19.5.2004 requested the Secretary, Primary and Elementary Education, Government of Rajasthan, Jaipur to "inform about the Action Taken by your office so that the Hon'ble High Court of Judicature at Jodhpur may also be informed accordingly" and by letter dated 21.5.2004, the Member Secretary of NCTE requested the Vice Chancellor, JNV University, Jodhpur "to look into the matter and take corrective action within fortnight failing which appropriate action will be taken by the Council."

(8) This court has no hesitation in observing that, what to say of NCTE having enough teeth to implement its policy, the NCTE neither has wisdom to examine the representation submitted by the

petitioner or by Dr. Jitendra Sharma nor the NCTE had any teeth to implement its policy as believed by this Court in its order dated 9.5.2003, despite the fact that the NCTE has been constituted because of the reason that the body existing earlier prior to present NCTE, National Council for Teacher Education, was an advisory body for the Central and State Governments on all matters pertaining to teacher education, with its Secretariat in the Department of Teacher Education of the National Council of Education Research and Training (NCERT) could not perform essential regulatory functions, to ensure maintenance of standards in teacher education and preventing proliferation of substandard teacher education. Therefore, as per National Policy on Education (NPE), 1986, NCTE was constituted with statutory status and necessary resources as a first step for overhauling the system of teacher education, as given out in the website of NCTE which says:-

> "INTRODUCTION
>
> The National Council for Teacher Education, in its previous status since 1973, was an advisory body for the Central and State Governments on all mattes pertaining to teacher education, with its Secretariat in the Department of Teacher Education of the National Council of Education Research and Training (NCERT). Despite its commendable work in the academic fields, it could not perform essential regulatory functions, to ensure maintenance of standards in teacher education and preventing proliferation

> of substandard teacher education (NPE), 1986 and the Programmes of Action hereunder, envisaged a National Council for Teacher Education with statutory status and necessary resources as a first step for overhauling the system of teacher education. The National Council for Teacher Education as a statutory body came into existence in pursuance of the National Council for Teacher Education Act, 1993 (No.73 of 1993) on the 17th August, 1995.

And objective of NCTE is as under:-

> "The main objective of the NCTE is to achieve planned and coordinated development of the teacher education system throughout the country. The regulation and proper maintenance of Norms and Standards in the teacher education system and for matters connected therewith. The mandate given to the NCTE is very broad and covers the whole gamut of teacher education programmes including research and training of persons for equipping them to teach at Pre-primary, primary, secondary and senior secondary stages in schools, and non-formal education, part-time education, adult education and distance (correspondence)education courses."

And whose functions are given in Section 12 of the NCTE Act, 1993 which contains (relevant portion quoted hereunder):-

> "Sec.12 FUNCTIONS OF THE COUNCIL
>
> It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-ordinated development of teacher

education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act, the Council may-

(a) .....

(b) .....

(c) co-ordinate and monitor teacher education and its development in the country;

(d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognised institutions.

(e) lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum;

(f) .....

(g) lay down standards in respect of examinations leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses or training;

(h) .....

(i) .....

(j) .....

(k) .....

(l) Formulate schemes for various levels of teacher education and identify recognised institutions and set up new institutions for teacher development programmes; .....

(m) .....”

(9) And NCTE, which has been given power by Section 14 of the NCTE Act, 1993 to grant recognition

under the Act to all institutions offering the course or training in the teacher education with power to take action against the erring institution under Section 17 of the NCTE Act, 1993 which includes withdrawal of recognition of the institution which follows the consequences of discontinuation of the course for training in teacher education by such institution and of concerned University with further serious consequence of incurring disqualification for the students who obtained offered courses and training from de-recognised institution from getting any employment under the Central Government, State Government or University, or in any school, College or other educational body aided by the Central Government or a State. Despite all above powers with NCTE, the NCTE sought help of the State Government (by letter dated 19.5.2004) and asked the State Government to inform about the action taken by the State Government against the JNV University, Jodhpur.

(10) In a matter of admission to the course concerned, the examinations are conducted every year. Thousands of students are appearing in the examination of PTET. The time is the essence for taking decision in such matters. A decision of the NCTE to allow or not to allow commerce graduates to take a course of B.Ed. affects the career of thousands of students. The effect is three folds, (i) if the commerce graduates are eligible to have the B.Ed. course, they cannot be denied and (ii) if they

are not eligible and they are permitted to take course of B.Ed., they deprives eligible candidates from the admission and these commerce graduates may not be eligible for any employment.

(11) As observed above, when the NCTE who laid down the norms and standards for teacher education course, took strong and positive view in favour of the petitioner and by same norms commerce graduates are not allowed to take B.Ed. courses in other states but the Coordinator of the PTET Test in Rajasthan, interpreting the same norms and standards, allowed the commerce graduates to appear in the PTE Test again for the year, 2004, the petitioner left with no alternative except to approach this Court by filing this writ petition.

(12) NCTE after supporting petitioner on all earlier occasions claimed that NCTE itself took the petitioner's case, has started action against the educational institution like JNV University. Further more, NCTE fully supported petitioner's contentions in reply to the writ petition as late as on 6.7.2004 and relied upon all communications referred above and submitted copies of the above referred communications. The NCTE submitted in para 9 of the reply that:-

> "It is abundantly clear that the answering respondent is taking up the matter with regard to implementation of norms and standards prescribed with the Government of Rajasthan as well as

> JNV University, Jodhpur. The answering respondent has already taken appropriate action for implementation of the directions given by this Hon'ble Court under order dated 9.5.2003. In view of it, the answering respondent submits that to satisfy the claims made by the petitioner, appropriate action is required to be taken by the State Government or by the Coordinator, PTET and the Registrar, JNV University, Jodhpur."
>
> (Emphasis supplied)

(13) The NCTE, therefore, did not pray that the writ petition of the petitioner be dismissed but prayed that the writ petition may be disposed of. (It will be worthwhile to mention here that in place of "disposed of" earlier word was typed "allowed"). Not only in entire reply stand of the NCTE was clear and unambiguously in favour of the petitioner but plea of the NCTE was that "appropriate action is required to be taken by the State Government or by the Coordinator, PTET and the Registrar, JNV University, Jodhpur.". Meaning thereby NCTE has no knowledge about there own powers given by Section 17 of NCTE Act, 1993, therefore, persons appointed in NCTE for overhauling the system of teacher education were depending upon action of the State Government, University, and coordinator, the alleged erring parties despite the fact that by one violation in such matter affects the career of hundreds of students whereas in Rajasthan norms of NCTE were not followed for years (as per NCTE's own view upto that

point of time). The State and coordinator, PTET submitted that they are not subscribing to the views of the NCTE. Even when the Coordinator PTET and the University failed to correct themselves, as directed by the NCTE, the NCTE neither took any action against them nor has explained any reason for not taking action. The action could have been taken before process of admission to PTET starts. But the NCTE was not concerned. He is the petitioner who came forward to fight for the stand of the NCTE, as after the stand as shown by the NCTE, the issue which was raised by the petitioner was accepted by the NCTE and in fact NCTE wanted to enforce its norms in a manner by which the commerce graduates could not have been admitted to PTET. The NCTE successfully took advantage of petitioner's filling writ petition and persuaded this Court to pass order for ensuring denial of admission to the commerce graduates to the PTET and B.Ed. courses in Rajasthan.

(14) It will be worthwhile to mention here that at present the court is considering the position as it was till the date of filing of the reply by the NCTE before this Court in this writ petition because subsequently the NCTE changed its opinion. The court will consider the manner and stage at which the NCTE changed its opinion about the fate of the commerce graduates because the manner in which the NCTE changed its opinion casts serious doubt over the persons dealing and are responsible with the

functioning of such a high body having responsibility of improving the standard of education that too of teachers education and further more for entire India.

(15) The Coordinator for the PTET had limited role and has nothing to do with the policy decision. He has to implement the decision taken by the NCTE or within the permissible limit as per the directions of the State Government and of the University without violating the standards/norms and directions of the NCTE. But since Coordinator, PTET, was necessary party and had right to take some decision with respect to allowing the candidates to take the PTET Test, therefore, the Coordinator was implemented as party in the writ petition. The Coordinator, PTET Examination (respondent no.2) submitted reply to the writ petition on 6.5.004, and submitted that he is rightly allowing the commerce graduates in Pre-Teacher Education Test. It will be worthwhile to mention here, the coordinator PTET in this reply submitted on dated 6.5.2004 did not disclose whether he ever brought to the notice of the NCTE or to the University that he is allowing the commerce graduates in PTET test in-spite of the contrary opinion of the NCTE. The coordinator did not disputed the receipt of the letter issued to him by the state government dated 16.6.2003, representation submitted by the petitioner and Dr. Jitendra Sharma and letter dated 27.2.2004 from Northern Regional Committee, NCTE indicting the clear view of the NCTE that norms are

not being followed in Pre-Teacher Education Test. From reply it appears that the coordinator had his own view for this controversy and that was not in consonance with the view of the NCTE, the view which was of the NCTE till that time. It is also not the case of the coordinator PTET that even after knowing the stand of the NCTE, he had right to follow his own view and to ignore the view of the NCTE. Strange is that Coordinator, PTET took a plea in para 2 of his reply:-

> "That the Apex Court by rendering various decisions in such matters has held that the discretion and decision exercised by the higher educational bodies like NCTE Syndicate or Senate are not to be interfered with by the courts as their decisions have been held by the Supreme Court is in accordance with the expertise adhered to them."

(16) It appears the Coordinator, PTET is under impression that courts cannot interfere in decisions of NCET but he, Coordinator, can take and implement his decision against the direction of the NCTE and, therefore, he rightly ignored the directions issued by the NCTE to Coordinator, PTET. (At the cost of repetition it is made clear that NCTE's stand till that relevant time was that Coordinator, PTET is not following the norms of NCTE.)

(17) The Coordinator, PTET even did not submit in the reply that he ever consulted issue with any of the persons of the NCTE or took an opinion of the

University or from the State. The reply is independent and not based upon any factual information received from the University or the State or the NCTE nor has been filed after taking approval of the NCTE that despite direction of the NCTE by various letters, copies of which were endorsed to the Coordinator, PTET he will proceed to give admission to the commerce graduates in the Pre-teacher Education Test. Not only this, Coordinator, PTET's own view was that issue could have been decided by the NCTE only, therefore, he directed the petitioner to contact NCTE, New Delhi vide his letter dated 2.6.2003 and he informed this fact to the State vide his letter dated 9.7.2003 (Annx. R/2).

(18) Be it as it may be, the Coordinator PTET may had his opinion and that opinion may ultimately found to be correct even then he had no power to disobey the instruction of the NCTE. He had no power to decide whether the NCTE was right or wrong. He at the most could have submitted his view to the NCTE or to the University or to the State in proper manner which could have been considered by the NCTE. Even an erroneous view of NCTE was binding upon the coordinator PTET. So far as view of the Coordinator, PTET on issue whether the commerce graduates are eligible for B.Ed. Course and for admission to PTET are concerned, are absolutely irrelevant as he has no power or authority to decide the issue which is absolutely within domain of NCTE and that authority

of the NCTE has not been challenged, and rightly has not been challenged by all the respondents, the State Government and the JNV University as well as by the Coordinator himself.

(19) The petitioner, a student after filing writ petition No.1805/2005 and Contempt Petition No.56/2004 and finding support from the NCTE submitted one after another application for early hearing of the writ petition because time was going from the hands of the petitioner despite the fact of "no dispute" so far as claim of the petitioner is concerned. On 25.2.2005, the court considered the prayer of the petitioner for interim relief and passed a detailed order. Some of the relevant portion of the order is as under:-

> "learned counsel appearing on behalf of NCTE, at this stage, sought time to get instructions from NCTE as this Court asked learned counsel to explain, apart from making request and pleading the case of the petitioner before the State and JNV University, what has been done by NCTE in the matter when NCTE came to know that in State of Rajasthan, commerce graduates are being misled to opt for B.Ed. Course under assumption that they will be eligible for teaching the subjects upto the secondary level despite NCTE had full knowledge that even after obtaining B.Ed. Degrees by the commerce graduates, as per NCTE guidelines, the students cannot have either government employment nor can be appointed in any of the education institution in the entire country as no commerce subject is taught anywhere upto secondary education level.

Whether NCTE is aware that they have been given such a vast power of recognition and de-recognition of the degrees and they failed to take appropriate action in time and by that, they might have ruined the career of large number of commerce graduates. Whether the NCTE is aware that because of their inaction, in place of eligible students, ineligible students are being given admission to B.Ed. courses.

Time is granted to NCTE, State Government and administration of JNV University to explain their conduct in this entire matter so that this Court may find out who has control over the matter of imparting education in the State of Rajasthan and whether the authorities who have been given power to take decision, failed to take decision in time despite the fact that the matter was and is of great importance and could have been decided and should have been decided by the concerned authorities within a reasonable period normally before any course starts.

This Court is constrained to observe that the Courts are flooded with litigation only because of incompetent persons sitting and holding the post having no capacity and ability to take decision what to say in time.

It appears that the officers may be given ample and vast power to take action but that also cannot make them potent and active officer.

Since the NCTE is fully supporting the stand taken by the petitioner and admits that if the commerce graduates will be given admission in B.Ed. Course for which they have to clear PTET test, still they will not be eligible to teach any subject upto Secondary level for which only such student can be given appointment, therefore, it will be just and proper to direct the State Government to see that none of the Universities or education institutions in the State of Rajasthan allow any commerce graduates to seek admission in

PTET test or B.Ed. Course till further orders."

(20) After a detailed order dated 25.2.2005 (only part of which is quoted above), coordinator PTET tried to explain his position by filling reply on 14.3.2005. The Coordinator, PTET in para 2 of reply stated that in response to the letter of Dy. Sec. (first), Education, Govt. of Rajasthan dated 16.8.2004 gave reply by letter dated 1.9.2004 (without disclosing that his decision to allow the commerce graduates in PTET is earlier in time), and entire position was made clear by him, obviously justifying his stand and contradicting NCTE's stand on the issue. The date of this letter is relevant because the petitioner preferred the writ petition in the month of March 2004 and also sought interim order as the PTET Tests were to start from 5.5.2004. Even before submitting his stand before the NCTE or even before state, the coordinator PTET after ignoring the letters of the NCTE and without knowing the stand of the University and of the State on issue, decided to proceed to hold test. There is no explanation why he did not respond to the earlier letters of the NCTE and of the State? Therefore, the letter dated 1.9.2004 is only a cover to justify his act, that too created during pendency of the writ petition. Not only this but it is doubtful whether said letter was in fact sent to the addressee and to the endorsees? This letter dated 1.9.2004 came on record for the

first time along with reply which was submitted by the coordinator PTET in court on 14.3.2005, i.e., after this Court's detailed order dated 25.2.2005. Assuming for the sack of argument even if said letter was sent by the coordinator PTET to the state and copy of it was given to NCTE also but that explanation also is no justification for proceeding in the matter as per the decision of the coordinator.

(21) On 15.3.2005, Joint Director (training), Directorate Secondary Education, Bikaner as officer-in-charge for State submitted his explanation in the light of the observations of this court in it's order dated 25.2.2005. As usually happens, the State instead of explaining their conduct of not taking care of career of the students of Rajasthan merely submitted that according to the State, the commerce graduates are eligible candidates for B.Ed. course because of more than one reason. The State had no explanation for, if the State was of such opinion then what for the State did not inform the NCTE about their view. It appears from all the facts, that State Government officials also applied their mind only when they came to know about the anguish of the Court shown in order dated 25.2.2005. The State also has not placed on record any document to show that in fact the matter was considered by the State Government at any time, particularly, even after this court's order dated 9.5.2003 in S.B.Civil Writ Petition No.1805/2003 and before the coordinator

decided to proceed with PTET Test for the year 2004. In fact the correspondence placed on record only reveals that the State was of the opinion that it was a matter requiring decision of the NCTE only and the State had nothing to do with it. The petitioner controverted the stand of the Coordinator, PTET and respondent no.3 by filing counter affidavits on 23.3.2005 and 1.4.2005. Till this time, no reply to writ petition was filed by the State-respondent no.1 for the reasons best known to the State in such an important matter where NCTE was sending letters to the State, University and the Coordinator PTET to correct themselves and according to the State, JNV University and coordinator PTET were right and the NCTE was wrong in sending letters to State and to University and to the coordinator PTET. If the State was right then why the State failed in perusing the cause of the commerce graduates of the Rajashthan before the NCTE, there is no explanation. Explanation submitted by the State is only justifying view of the coordinator PTET. There is no reply to court's query (order dt.25.2.2005) that:-

> "…… State Government and administration of JNV University to explain their conduct in this entire matter so that this Court may find out who has control over the matter of imparting education in the State of Rajasthan and whether the authorities who have been given power to take decision, failed to take decision in time despite the fact that the matter was and is of great importance and could have been decided and should have been decided by the concerned

authorities within a reasonable period normally before any course starts."

(22) Be it as it may be, the State submitted reply to the writ petition on 25.4.2005. The State came up with the positive stand that admission of the commerce graduates in B.Ed. is in consonance with the guidelines and norms prescribed by the NCTE. There is no explanation of the State, either in the affidavit dated 15.3.2005 or reply dated 25.4.2005 whether the State authorities ever discussed the issue with the NCTE before justifying admission of commerce graduates in B.Ed. courses? Even it has not been disclosed when the state considered the issue raised by the petitioner and by the NCTE itself. Even it has not been disclosed by the State in it's reply affidavit dated 15.3.2005 or reply to writ petition dated 25.4.2005, that at what level the matter was considered so as to find out whether in fact the alleged view taken in reply is the view of the State. Normally, view disclosed in reply of the State is not doubted by the court but when the respondent-State firstly, failed to disclose material particulars about dates of events and secondly, contradicted their own stand as taken in letter dated 16.6.2003 wherein it has been mentioned by the State that coordinator should do the needful and thirdly by conduct State supported the petitioner and fourthly, stand of the State has come on record after such an inordinate delay that itself casts serious doubt and

raises question, whether in fact matter was considered by the State or the State by coincidence found some lacuna to justify their inaction and further more, the State did not disclose all above material particulars despite court's detail orders. Be it as may be. The stand taken in reply of the State and coordinator became the ground for changing stand of NCTE or for justifying their changed stand. It appears while changing stand after alleged consultation with the State, the NCTE failed to understand that if they were appraised by the State now then whether the NCTE while prescribing norms and standard did not consult the State or did not look into the school subjects of the schools in Rajasthan. Whether the NCTE did not look into school courses after petitioner's representation and orders of this Court?

(23) The view of the NCTE changed only after 6.7.2004 as on that day reply supporting the petition was filed by NCTE in this writ petition. For the first time the NCTE submitted it's changed view before this court by filling affidavit of Regional Director, NCTE, Jaipur. This affidavit also was filled because this Court directed all the respondents to explain their conduct by detail orders mentioned above. The affidavit of the Regional Director, NCTE, Jaipur says that:-

> (4) "That now the State Government has apprised the answering respondent that in the secondary level, there is one subject of Social Science in which some lessons are there relating to Commerce. Therefore, while teaching Social Science, lessons related to commerce practice and bookkeeping are also taught. The state Government has also explained their other contentions in detail, in additional affidavit, a copy of whereof has been supplied to the answering respondent."
>
> (5) That the NCTE is fully satisfied with the contentions taken by the State Government in Additional Affidavit. The same are in conformity with the Act and Regulations of the NCTE meant for this purpose."

(24) So, the NCTE is fully satisfied that they were wrong and the State was right! The NCTE not only in this affidavit (filled on 24.3.2005) but when court again passed a detailed order and directed NCTE Chairman to give answer to specific queries it gave evasive replies to court questions. Evasive reply particularly, about consideration of petitioner and Dr. Jitendra Sharma's representation. This is unfortunate that even when the Director NCTE was again directed to furnish facts relating to entire matter by Order dated 23.5.2005, he avoided to reply the court question:-

> "……how the present matter was dealt by the NCTE <u>at their level</u> <u>and</u> <u>with the State Government</u> <u>and</u> <u>with the Universities of the Rajasthan?</u>"
>
> Answer: In regard to Question No.9, it is submitted that the matter was considered by the then Regional Director, who chose to address a letter dt. 27.2.2004 to the Secretary, Primary and Secondary Education, Govt.

> of Rajasthan and endorse the same to the Vice-Chancellor, Jain Narain Vyas University, Jodhpur and others. As stated in reply to question No. 8, the whole matter was placed before the NRC of NCTE at Jaipur in it's Meeting held on 21.3.2005, thereafter the Regional Director, NCTE filed the counter-affidavit on 24th March, 2005.

(25) This is all how the present matter was considered by NCTE (1) at their level, (2) with State Government and (3) with Universities of the Rajasthan! The NCTE failed to submit that before laying down norms and standards for B.Ed. courses and entrance test for B.Ed., NCTE looked in to various school course of the all States. NCTE failed in justifying their any stand, either supporting petitioner's case or for changing their stand. The NCTE failed to understand that NCTE has not been established to follow the education standards State wise but has been established to achieve planned and coordinated development of the teacher education system throughout the country.

(26) The reason given by the NCTE for change in their stand is that thereafter the NCTE had consultation with the State and they found that the State was right in allowing the commerce graduates in B.Ed. Course. This "thereafter consultation with the State" appears to be a false plea as material facts have not been disclosed relating to alleged consultation with the State Government. In reply affidavit, neither the State nor the NCTE disclosed

when said consultation took place between the State and NCTE. It was also not disclosed at what level the consultation took place. It has not been disclosed what materials were considered for changing of decision by the NCTE. It was also not disclosed when, how and who took earlier decision supporting the petitioner. What were the considerations for taking earlier decision- nothing has been shown despite the fact that this court again and again directed NCTE to explain the stand. The replies and affidavits were filed but not for disclosing true and complete facts but have been filed to suppress the facts or to mislead the court, particularly about the level at which the matter was considered. Rather, if any inference can be drawn from all the replies and affidavits more particularly from affidavit of Shri Shardindu, Chairman, NCTE then that can be – there was no consultation of State and University officers with the NCTE officials at any time on the issue for which now the State and Coordinator PTET are finding support from the changed stand of the NCTE. In above facts, this Court on 8.4.2005 after taking note of the arguments of the learned counsel for the NCTE passed the order, relevant portion of which is as under :-

> " However, the NCTE is also directed to submit an affidavit or any document evidencing consultation with the State Government subsequent to the filing of the earlier reply and the decision they might have taken for the

> purpose of changing their earlier opinion or decision.
>
> The NCTE is also directed to file affidavit for the document in support of their stand that they filed the reply on earlier occasion after examining the merits of the case, may it be without looking into the reply of the State Government and without consulting the State Government.
>
> Learned counsel for the petitioner submits that in other States like Delhi, Gujarat etc., there are different standards prescribed by NCTE or the same regulation is being interpreted by NCTE itself in a different manner than the interpretation sought to be given in the State of Rajasthan. The NCTE may explain the factual aspect in this regard also."

(27) It will be worthwhile to mention here that the NCTE was permitted to place on record documents evidencing consultation with the State Government subsequent to the filing of the earlier reply and were also permitted to submit the decision they might have taken for changing their earlier opinion or decision but the NCTE failed to produce any document by which it can be gathered that in fact the view was changed by the NCTE after application of mind or after consultation with the State Government on the point in issue.

(28) Shri N.R. Murli, the then Regional Director, NCTE, Jaipur submitted affidavit in response to the order of this Court dated 8.4.2005 disclosing the reasons for establishing the National Council for Teacher Education and the powers which

NCTE possesses with responsibilities which the NCTE was supposed to discharged. In this affidavit dated 26.4.2005 in para 5, it has been stated that there are possibilities to make B.Com graduate eligible for admission to the B.Ed. course as a commerce graduate is fit to impart instructions at Upper Primary level teaching and since there are subjects of Business Studies and Accountancy as well as Bookkeeping are taught at senior secondary level, therefore, the commerce graduates will be eligible to taught those subjects in the schools. However, in the affidavit it has been admitted that educational qualification required for appointment as teacher at senior secondary level is master degree in commerce (M.Com). Therefore, according to NCTE, the commerce graduates cannot be denied opportunity to take B.Ed. course. It is also submitted that a person equipped with B.Com and B.Ed. qualification can apply for M.Ed. and thereby he becomes eligible for being appointed as lecturer in the elementary teacher education program. If that is correct then why commerce graduate cannot have same opportunity in other State of seeking admission in M.Ed. after B.Ed., is not available? The NCTE in para 4 of the affidavit stated that:-

> "that NCTE has to lay down regulation keeping in view the needs of the entire country and is not state centric. The teacher education is not confined to a State alone. A candidate having a particular educational training is entitled to consideration for employment not only in a particular State but anywhere in the country also,

> as every body is entitled for consideration for appointment anywhere in the country as the selection cannot be confined to the State of domicile."

(29) Further the NCTE has shown its concern for future eventualities (though it may have failed to look into the present) therefore, in affidavit stated as under:-

> "In this process, it may well be that in some States subjects falling in domain of commerce may included in curriculum whether <u>at present or in future. Those having educational qualifications of B.Com. may in such eventualities stand deprived of getting such an appointment. That will be to the detriment of those doing B.Com. from Rajasthan."</u>

(30) So far as all letters which were written by the NCTE, taking stand against the B.Com graduates, an evasive reply has been given in the affidavit, relevant portion is in para 9 which is as under:-

> "As per letters addressed to the State Government, from time to time, as referred to in the order of this Hon'ble Court, what was said was that prima facie it appear to be correct."

It appears that the NCTE still was finding the facts prima facie correct and was not sure what is correct in their considered opinion.

(31) More shocking is that the same norms and standards prescribed by the NCTE are interpreted by

the different States and Union Territories to deny admission to the commerce graduates in B.Ed. courses but are interpreted in the State of Rajasthan to permit commerce graduates to take admission in B.Ed. and seek appointment. The NCTE who is claiming that it has been established for laying down the norms and standards for teaching courses for entire Nation and shown more concern for the future eventualities like if commerce graduate as such may not get appointment for the post of teacher but he will in future obtain post graduate degree and will become eligible for such appointment. It appears that the NCTE is under impression that how it can show their norms in consonance with State service laws and courses taught in schools in State instead of showing what it is doing for coordinated development of the teacher education system for entire-India and not laying down the norms in such a manner which will allow different eligibility criteria for different States and as per service laws of States. NCTE tried to mould the B.Ed. courses to suit the commerce graduates of the State of Rajasthan and has no concern about the fate of the commerce graduates of the other States who are being deprived from B.Ed. courses and consequently, are being denied opportunity to seek further study in M.Ed. course and appointments in any educational institution. Despite best efforts by the very able advocates of the NCTE, the NCTE is not in position to explain their stand so

far as allowing the commerce graduates in Rajasthan for B.Ed. and denying commerce graduates B.Ed. course in other States like Delhi, Gujarat etc. therefore, again an evasive answer has been given on behalf of NCTE which is also relevant to be quoted here:-

> "That as far as the submission of the contention of the petitioner which was taken note of by this Hon'ble Court that in the other States like Delhi, Gujarat etc. there are different standards prescribed by NCTE or the same Regulation is being interpreted by NCTE itself in a different manner then the interpretation sought to be given in the State of Rajasthan, suffice it to say that the submission is wholly incorrect as the regulation is already on record and is uniformly applicable to all the States and no question arises of NCTE differently interpreting its Regulation in different manner, then, the interpretation sought to be given in the State of Rajasthan." (Affidavit dated 15.4.2005 filed on 26.4.2005)

(32) Be it as above, the arguments were heard on 28.4.2005 and concluded on 3.5.2005. Judgment was reserved and this Court found that position has not been made clear by the NCTE which is the body expert constituted by the Central Act and has been given powers to lay down the criteria. It was necessary to know whether the decision taken earlier to deny the opportunity to the commerce graduates was a decision taken by the competent body and is being denied by Regional office of the institute or earlier decision was of the NCTE itself and to save Regional office or

its officers past or present, the stand has been changed by the NCTE, this Court passed order on 13.5.2005 and operative portion of the order dated 13.5.2005 will be relevant and is quoted here:-

> "After hearing arguments of both the parties, this Court deems it proper to direct the NCTE to file affidavit of Chairman of the NCTE, explaining (1) whether the norms and standards prescribed by the National Council of Teachers Education for secondary teachers education programme providing secondary teachers education programme for preparing teachers for secondary and teachers for senior secondary school, are the norms and standards for preparing the teachers specialized in subjects or norms and standards are for preparing teachers generally? (2) Whether any policy decision or any other decision was taken for the above purpose by the NCTE at any time? (3) whether the students are given admission to the B.Ed. Course subject wise on the basis of their subjects and if so, whether the students of the B.Ed. are trained to impart education for the subjects which they had during their studies and they are to take education and training during their B.Ed. subject, (4) whether the norms and standards prepare the specialized teachers for senior secondary school? (5) Whether NCTE had permitted all States in India to interpret the norms and standards (referred above) with reference to school studies in the State? (6) When and at what level the representations of the petitioner as well as the representation of Dr.Jitendra Sharma (Annx.7) were considered by the NCTE in pursuance of the order of this Court passed in S.B.Civil Writ Petition No.1805/2003 dated 9.5.2003? (7) whether the affidavit filed by Shri Shardindu, Chairman, NCTE in Civil Misc. Contempt Petition No.56/2004 was filed after taking a decision on the representation of the petitioner and the representation of Dr. Jitendra Sharma? (8) Whether the affidavit filed by Mr.N.R. Murali, Regional Director,

> National Council for Teachers Education, Tilak Nagar, Jaipur has been filed on the basis of any decision taken by the NCTE and if so, then when and at what level the decision to change the stand by the NCTE was taken? (9) any other relevant information which may throw light on, how the present matter was dealt by the NCTE at their level and with the State Government and with the University of the Rajasthan.
>
> This Court feels that despite court's detailed order, facts have not been brought on record by the respondents, therefore, the respondent NCTE is also directed to keep the entire record of consideration of petitioner's representation and representation of Dr.Jitendra Sharma and all records relating to the decision taken against the commerce graduates and in favour of the commerce graduates of the State of Rajasthan.
>
> This Court further directs the respondent-NCTE to keep a competent officer with complete records in court on 23.5.2005 so that the matter may be decided by the court without any further delay."

(33) On 30.5.2005, a reply affidavit has been filed by same Shri Shardindu, Chairperson, National Council for Teacher Education, New Delhi. Brief arguments were advanced by both the counsel again on 30.5.2005 on the points referred in the order dated 13.5.2005 in the light of the affidavit of the Chairman, NCTE dated 30.5.2005.

(34) In reply affidavit, it has been stated on oath by the Chairman, NCTE that :-

> (1) B.Ed. degree is not subject specified. Degree is not awarded of B.Ed.

(Science), B.Ed.(commerce) or B.Ed. (Arts) on successful completion of the course by the students.

(2) Norms and standards for secondary teacher education program allow the discretion of the State Government or University as per the policy of State Government or University.(answer to question no.3)

(3) Norms and standards laid down by the NCTE has not permitted the States in India to interpret the norms and standards with reference to school studies in that State except as provided in para 3(b)(of the norms and standards for secondary teacher education program). The State Government in compliance to NCTE Regulation may frame policy as per the scheme of studies and recruitment Rules of the respective States.

Contradicting answer given for question no.3

(4) The representation of Dr. Jitendra Sharma was considered by the office of the Northern Regional Committee of the NCTE at Jaipur and it was referred to the State Government vide letter dated 27.2.2004 for issuance of necessary directions so that the subject may be allowed to the successful students as per NCTE norms.

(a) Nothing has been said about the representation of the petitioner despite the fact that question with respect to the consideration of representation of the petitioner was also specifically asked by the Court.

(b) The representation could have been considered only by apex body of the NCTE as per the direction of this Court in S.B.Civil Writ Petition NO.1805/2003 dated 9.5.2003 as NCTE, Delhi through its Chairman was party in the writ petition but that was not considered by the NCTE, New Delhi.

(5) In answer to question whether affidavit in contempt petition no.56/2004 has been filed by Shri Shardindu, Chairman, NCTE, after decision on representation of petitioner and of Dr.Jitendra Sharma, it has been stated that

affidavit was filed by the Chairperson, NCTE in view of the action (not decision) taken by the office of the Northern Regional Committee of NCTE, Jaipur without specifying whether that view was approved by the NCTE at its Central level or not. The Chairman, NCTE since himself has filed the contradictory affidavits in this Court, therefore, it appears that he without disclosing who and how NCTE Regional Office considered the representation of the petitioner and of Dr.Jitendra Sharma wants to shift burden upon the Regional Office of the NCTE over which he himself has control if he himself was personally not looking after the affairs of NCTE Regional Office at Jaipur at relevant time.

(6) It appears from the answer to question no.8 that the entire matter was placed not before the apex body of the NCTE for consideration and it was placed only before Northern Regional Committee as that too as late as on 21.3.2005.

(35) This Court after hearing arguments at length at earlier stages and thereafter finally on 13.5.2005 found it difficult to believe that despite the directions of the High Court in its order dated 9.5.2003 to the National Council for Teacher Education, Delhi, that apex body will not consider the representation of the petitioner and will project in contempt petition that not only the representation was considered by the NCTE and NCTE accepted that the petitioner has rightly raised the grievance and further projected that State Government and the educational institutions and Universities in Rajasthan are not following the mandatory guidelines and norms and further gave threat to the JNV University, Jodhpur of consequence for not following

the guidelines and asked the State Government to take action for not following the guidelines by the JNV University, therefore, one opportunity was given to the NCTE, Delhi particularly to the Chairman, NCTE to explain the position as mentioned above but by affidavit of Shri Shardindu, Chairman, NCTE dated 30.5.2005 it is clear that more has been suppressed from the Court by the Chairman of the NCTE by filing absolutely vague affidavit and by not disclosing the relevant dates and decisions taken by the NCTE and by not submitting any relevant record before this Court recording the consideration of the representation, not only of the petitioner and of Dr.Jitendra Sharma but what were the deliberations and the consultations with the State Government and the Regional Committee itself with its apex body and deliberations and consultations with any of the educational institutions for taking decision in this matter either prior supporting the petitioner or subsequent, after filing the reply before this Court, have not been placed on record. Nor any thing has been shown from record in court despite the fact that officer of the NCTE was directed to remain present in Court. It appears from all the replies and affidavits filed by the NCTE that the facts have been suppressed deliberately, evasive replies have been given purposefully and in fact no mind was applied either before or after by the NCTE on the controversy which has been raised by the petitioner.

(36) It will be pertinent to mention here that the State Government filed the reply before this Court in this writ petition in such an important matter after more than one year only on 25.4.2005 justifying the admission of the commerce graduates in B.Ed. course that when this Court directed the state to ensure that no commerce graduate may be admitted to B.Ed. course in Rajasthan. The State could get the opportunity of filing reply to the writ petition only because this Court did not dispose of the writ petition on the basis of the stand taken by the NCTE whose authority to take decision is not under challenge by any of the respondents till today. The State may have its own teaching subjects for various classes upto the level of 12th standard and may have service law allowing different criteria and eligibility for appointment to the post of teacher of various level but if the different position continues in different States allowing different eligibility criteria for education of teachers and their further studies in the field of educational training courses and further in the matter of appointment to the various posts in the different States then also it will be worthwhile to recapitulate that NCTE has been established to over come the difficulties which were in existence during the period of existence of National Council for Teacher Education which was in existence since 1973 and is a body under the department of Teacher Education and National Council

of Educational Research and Training (NCERT) and NCTE has not been established to permit different States to have their own eligibility criteria for the teacher education course and appointment to those successful candidates on the basis of eligibility criteria in one State and which is not the eligibility criteria in other States. We may recapitulate here the object for which NCTE has been established which says:-

"The main objective of the NCTE is to achieve planned and coordinated development of the teacher education system throughout the country" and not for State wise standards and norms. This Court is conscious that to bring all together time is required but it is not the case where the NCTE is seeking time to have teacher education system uniform or as far as possible uniform in all the States of India but the NCTE is advancing the cause of having different eligibility criteria for teacher training courses for different States and has not shown any indication that they had any plan to see that there should be coordination for development of teacher education system between the all the States at per the objectives of the NCTE. The NCTE has even justified the interpretation of one norm prescribed by NCTE to be used for providing different eligibility criteria. Even if it is a process of laying down uniform criteria for eligibility of the students for teacher education in the entire country then 10 years cannot

be said to be a short period within which the National Council for Teacher Education could not look into the various subjects taught in the different classes up to the level of 12th standard in different States so as to formulate a program of uniform application to achieve the object of coordination in development of teacher education system throughout country.

(37) This Court constrained to observe that in place of laying down criteria in proper manner and in place of asking the educational institutions to act to achieve the object of the NCTE, the NCTE tried to find out way to justify the stand of the State so as to allow the different standards in different States. If the courses in classes in any State cannot be changed to achieve the planned development of education system in country then what is the purpose of establishing such an high autonomous body with powers to recognise and de-recognise educational institution making the degree granted by the de-recognised educational institution of no use to the students for getting employment in government services, either of the State or Union or in any educational institution? If the different eligibility is permissible State wise then whether the student obtaining degree from educational institution in one State will not be eligible for further studies or appointment in another State? Whether there can be different standards for subjects which are not

confined to the local environment of the State? The controversy in this writ petition is with respect to the students of commerce graduates and not confined to the subject or course or degree of local language or subjects which can be said to be allowed because of the local reason of the State or to give any concession to any State or class of students within the permissible criteria of classification. Therefore, it does not lie in the mouth of the NCTE to say that their standards and norms in relation to the commerce graduates for the purpose of admission to the B.Ed. course can be different as per the decision of the State Government.

(38) The learned counsel for the petitioner was right in relying upon the judgment of the Hon'ble Supreme Court delivered in the case of Prof. Yashpal and anr. vs. State of Chattishgarh (JT 2005(2) SC 165), though delivered in a different controversy but is relating to educational matter and Hon'ble the Apex Court considered the word “co-ordination” used in Entry 66 of the Union List of the Seventh Schedule to the Constitution of India. The Hon'ble Supreme Court considered the earlier judgment of the Hon'ble Supreme Court delivered in the case of State of Tamil Nadu v. Adhiyaman Educational and Research Institute (JT 1995(4) SC 136 in para 17) and also considered the reports containing relevant passage in sub-paras (i) and (ii) of para 41 of the report. Sub-para no. (i) of para 41 of the report referred in the judgment

of Prof.Yashpal(supra) is relevant, which is as under:-

> "(i) The expression 'coordination' used in Entry 66 of the Union List of the Seventh Schedule to the Constitution does not merely mean evaluation. It means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development. It, therefore, includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. It would, therefore, also include power to do all things which are necessary to prevent what would make 'coordination' either impossible or difficult. This power is absolutely and unconditional and in the absence of the valid compelling reasons, it must be given its full effect according to its plain and express intention." (emphasis supplied)

(39) We can take help of this valuable explanation for the word 'coordination' while considering the object of enacting the National Council of Teacher Education Act, 1993. As stated above, the NCTE has been established to achieve planed and coordinated development of the teacher education system throughout the country, then it means harmonisation with a view to forge a uniform pattern for a concerted action according to a certain design, scheme or plan of development and as held by the Hon'ble Apex Court, it therefore includes action not only for removal of disparities in standards but also for preventing the occurrence of such disparities. Hon'ble Apex Court held that it would, therefore, also include power to do all things which

are necessary to prevent what would make 'coordination' either impossible or difficult. Hon'ble the Supreme Court in para 21 of the judgment held that “the Central Government has some voice in the determination of standards of teaching and examination in universities, both old and new.” The degree of B.Ed. And M.Ed. are granted by the universities and the Central Government established high power autonomous body NCTE, which clearly indicates that whatever is said by the NCTE, is the voice of the Central Government in determination of standards of teaching. The learned counsel for the petitioner very rightly pointed out that Hon'ble the Supreme Court in the case of Union of India vs. Shah Goverdhan Lal Kabra Teachers' College ((2000) 8 SCC 228) held that “The National Council for Teacher Education Act, 1993 is one squarely dealing with coordination and determination of standards in institutions for higher education within the meaning of Entry 66 of List I of the Seventh Schedule. Both Entries 65 and 66 of List I empower the Central Legislature to secure the standards of research and the standards of higher education, the object behind being that the same standards are not lowered at the hands of the particular State or States to the detriment of the national progress and the power of the State Legislature must be so exercised as not to directly encroach upon power of the Union under Entry 66. The power to coordinate does not mean merely the

power to evaluate but it means to harmonise or secure relationship for concerted action. Impugned Section 17(4) merely provides the consequences if an institution offers a course or training in teacher education in contravention of the Act though the ultimate consequences under Section 17(4) may be that an unqualified teacher would not be entitled to get an employment under the State or Central Government or in a university or in a college; that provision cannot be construed to mean a law dealing with employment. NCTE is an expert body created under the provisions of the National Council for Teacher Education Act, 1993 and Parliament has imposed upon such expert body the duty to maintain the standards of education, particularly, in relation to teacher education. Education is the backbone of every democracy and any deterioration in the standard of teaching in the B.Ed. Course would ultimately produce sub-standard prospective teachers. Therefore, the conclusion of an expert body should not be lightly tinkered with by a court of law without giving due weightage to the conclusion arrived at by such expert body."

(40) Here in this case, this Court finds that the petitioner as well as all the respondents also are not challenging the authority of the NCTE, rather they all are saying that that is the expert body who can take decision and lay down the norms and standards. There is no hesitation in holding that

there is force in the contention of the learned counsel for the petitioner that the norms which are laid down by the NCTE are binding upon all the States and the standards fixed by the NCTE cannot be lowered down, what to say of College Universities but even by the State. Simply because it is co-incidence that the NCTE decided to support the stand of the State, that does not mean that the State was right nor this can be appreciated that since the State has supported the NCTE, therefore, the interpretation as suggested by the NCTE providing for different standards of education for teachers training in different States is correct and disparities are required to be maintained. The Hon'ble Supreme Court in the case of Shah Goverdhan Lal Kabra(supra) held that the education is backbone of every democracy and any deterioration in the standard of teaching in the B.Ed. Course would ultimately produce sub-standard prospective teachers. The NCTE is required to keep this in their mind and should act to the expectation of all so that faith which was reposed in such high body, may be not only maintained but affirmed. Therefore, the NCTE should know their importance, position and power so that they may remove disparities in standards and may prevent the occurrence of such disparities which is in existence in the matter of admission to the commerce graduates in B.Ed. Courses.

(41) The State took a stand for the first time in reply dated 25.4.2005 and that is in favour of the commerce graduates. The State as well as the Coordinator, PTET did not disclose why they did not make their position clear to the NCTE immediately on receipt of the representation of the petitioner and communications from the NCTE. Not only this but the State Government has not disclosed when this matter was considered at State level and the State found that the NCTE is wrongly holding the State, Coordinator PTET and the University guilty for violating the norms and standards prescribed by the NCTE. Despite taking part in all the proceedings before this Court and knowing it well that court wants to know whether in fact there were deliberation between the State and the NCTE, nothing has been disclosed by the State. This is unfortunate that if the State was convinced that as per the norms and standards of the NCTE(Annxs.1 and 2), the commerce graduates are eligible for B.Ed. course then why the State officer,i.e. Deputy Secretary, Education (Ist) sent the representation to the Coordinator PTET and to the Regional Director, NCTE dated 16.6.2003 (Annx.6) and why the State authorities did not controvert the allegation levelled against them of violating the norms of the NCTE as leveled in NCTE's letters dated 27.2.2004, 19.5.2004, 15.6.2004 and 22.6.2004. It appears from all the documents which are placed on record that in fact the State itself

did not apply its mind to the issue raised by the petitioner and on the allegations which were levelled by the NCTE against the State and the JNV University, Jodhpur.

(42) Because of all above situation created by all the respondents carelessly the fate of the hundreds or even thousands of students, stands affected but none of the respondent was in hurry, what to say of hurry, they were not concerned with the fate of a student. Contrary to it the petitioner who had a stay order with him, submitted counter affidavits for each and every reply affidavit and submitted one after another application for early hearing so that controversy may be settled and position becomes clear finally.

(43) The contention of the petitioner in above circumstances is dependent upon the various facts apart from legal interpretation of norms and standards prescribed by the NCTE. The experts are the council for the teacher education (NCTE), State Education Department, the Universities and any other expert whose opinion about the prevailing subjects and the courses in various classes in India is relevant. The learned counsel for the petitioner put enormous labour and very ably submitted for perusal of this Court syllabus and curriculum for various courses at different levels of studies in schools as well as syllabus and curriculum for B.Ed. courses.

Learned counsel for the petitioner also relied upon the Service Rules for appointment of various posts of teachers and submitted that the commerce graduates cannot even after obtaining the B.Ed. degree teach any subject up to the level of secondary standard and a commerce graduate with B.Ed. is not eligible to be appointed as teacher for senior secondary class. Therefore, the petitioner who is Bachelor of Commerce (B.Com.) and is also holding the post graduate degree in commerce (M.Com.) and is eligible for appointment for the post available for imparting education is being asked to compete with some what ineligible candidates and in case those ineligible candidates secure more marks they will be permitted to take admission in B.Ed. course for no purpose. I need not to refer all those courses, curriculum, subjects and topics in subjects to find out whether the chapter which are relied upon by the respondents are the courses for which the commerce graduates can be eligible teachers or not because of the simple reason that first there must be opinion from the expert in the field and when this Court found that there was no application of mind by the said experts, therefore, it will be just and proper to direct the NCTE to consider the issue raised by the petitioner thoroughly and take appropriate decision for which the NCTE may have consultation with the State, Universities and educational institutions and the experts in the field of education.

(44) The learned Addl. Advocate General Mr. N.M. Lodha, learned Senior Counsel Shri M.Mridul seriously controverted the contention of the learned counsel for the petitioner and submitted that since B.Ed. degree is not subject specific and the B.Ed. degree is the foundation for getting the admission in M.Ed. course and, therefore, a commerce graduate can also take admission in M.Ed. course. Meaning thereby, the students who are seeking further studies by joining the M.Ed. course having graduation in commerce cannot be denied opportunity to take admission in M.Ed. and the M.Ed. degree holder though having graduation in commerce, can be appointed as teacher. It is also submitted that a commerce graduate after obtaining the B.Ed. degree, may obtain a post-graduate degree in commerce and thereby he becomes eligible candidate for appointment as teacher for senior secondary standard. It is also submitted that it is not necessary that for becoming eligible for appointment , a commerce graduate must first obtain the post-graduation commerce degree and thereafter should obtain the B.Ed. degree. Therefore, a commerce graduate after his B.Ed. may obtain M.Com degree and get the appointment. It is also submitted on behalf of the State Government that a teacher Gr.III can be promoted to Grade II teacher even in general category and Grade II teacher can be posted as Head Master of Upper Primary School. This is because that there is a reservation of 50% vacancies

for promotion from the post of teacher Gr.III to teacher Gr.II. It is also submitted that teacher Gr.II can be promoted to the category of lecturer (teacher Gr.I) to teach commerce subject.

(45) The learned counsel for the petitioner and the learned counsel for the respondents have presented their interpretation of the eligibility prescribed in the norms and standards for secondary teacher education program as given in clause (iii) of above norms read with sub-clause (b) of clause (iv) of the norms. According to the learned counsel for the petitioner, as per clause (b) the teaching methodology for teachers up to secondary level and for teachers for the senior secondary level are different, whereas according to the learned counsel for the respondents, the eligibility criteria given in clause (iii) of the norms (Annx.2) provides no dis-qualification for graduate of any subject and as per sub-clause (b) of clause (iv) of the norms, admission can be given as per the policy of the Government/University as per the rules of the concerned State Government. It appears that the stand of the respondents is only to find out way out from the mess which they have made.

(46) The question though was raised by the petitioner was that the State Government and the University and the PTET are not following the norms prescribed by the NCTE and has not challenged the

criteria and norms prescribed by the NCTE but the respondents understood it as challenge to their policy and, therefore, the respondents in their reply tried to submit that the petitioner cannot challenge the decision of NCTE as it is a policy decision. The respondents failed to appreciate that the petitioner sought enforcement of the alleged policy decision of the NCTE and has not challenged the decision of the NCTE. The respondents were further wrong in resisting the petitioner by taking defence on the plea that the policy decision cannot be challenged. They ignored that absolutely arbitrary decision or creating arbitrary distinction and a decision just contrary to the aims and objects for which the body has been constituted, can be challenged by filing the writ petition. Each and every decision may be of high body, cannot be termed to be policy decision. The respondent-NCTE not only failed to demonstrate that any decision was taken by the apex body of the NCTE denying the admission for the commerce graduates or allowing the commerce graduates for B.Ed. Course. The respondents failed to place on record any decision which was taken by the NCTE in pursuance of the order of this Court or otherwise. Any decision otherwise taken about issue of admission of commerce graduate in B.Ed. course has also not been placed on record. Not only this but if vague submission of NCTE is accepted then that decision was taken at the level of Regional Office of the NCTE. That was never brought

to the notice of apex body of the NCTE. Despite their all so called application of mind, the respondents failed to place on record any material by which it can be gathered that the commerce graduates in other States are being rightly deprived from B.Ed. course and that is in accordance with the policies of those States where the commerce graduates are not allowed in B.Ed. course. The State also could not place on record any decision of the State Government by which they can say that they took a decision so as to term it as a policy decision. A view which is taken to contest one's own decision ipso facto cannot become a policy decision. The respondents could have disclosed who was competent to take a policy decision and they failed to disclose. This Court as stated above, cannot evaluate the various courses taught in the various standards of classes, therefore, at this stage when process of admission has started, the career of large number of students cannot be ruined because of the total failure of the NCTE to control and govern the issue of admission. Therefore, the old practice which was continued for so many years, can be continued for one more year and the commerce graduates who have been given permission to apply for the B.Ed. course subject to decision of this Court, can be given admission for the current year of their being successful in the pre-teacher training test.

(47) The conclusion is that the NCTE did not consider the representation of the petitioner in pursuance of the order of this Court dated 9.5.1993 passed in S.B.Civil Writ Petition No.1805/2003. The NCTE did not apply its mind to the representations submitted by the petitioner and by Dr.Jitendra Sharma and without taking any decision whether the commerce graduates are eligible for admission to the PTET and B.Ed. Course, gave one after another letter to the JNV University and the State as well as to the Coordinator, PTET. The State, JNV University, Jodhpur and the Coordinator failed to consider the directions of the NCTE and further failed to present their stand before the NCTE so that the NCTE could have re-considered its stand taken in the letters sent to these authorities. The NCTE failed to explain reason for laying down the norms which according to the NCTE itself can be interpreted by the State as per their alleged policies which may destroy the entire aim and object of enacting the NCTE Act, 1993 and which may allow the disparities in standard of teacher education. The NCTE failed to “do all things which are necessary to prevent what would make coordination either impossible or difficult” as expected from the NCTE and, therefore, the NCTE failed to lay down norms for coordinated development of teacher education system for India. The Chairman, NCTE misled this Court by filing affidavit in S.B.Civil Contempt Petition No.56/2004 by submitting that the NCTE

considered the representation of the petitioner and is also taking action against the erring authorities. The JNV University, Jodhpur as well as the State Government remained unconcerned with such an important issue for such a long time and that is deprecated. The coincidence and fortune will not always save the authorities who take a stand without application of mind as has been done in this case. The NCTE failed to disclose any of the decisions on the basis of which they either can say that the commerce graduates are eligible candidates for the B.Ed. Course in the State of Rajasthan and further failed to disclose that the commerce graduates of other States are ineligible candidates in B.Ed. Course. The NCTE further failed to justify the disparities prevailing for admission in the B.Ed. Course or their entrance test. The NCTE further failed in submitting before this Court that now they will proceed to reconsider the entire matter and will take a decision on issue to remove the disparities. The Chairman, NCTE Shri Shardindu is also responsible for all mesh and for convincing the petitioner that the NCTE has accepted the petitioner's view and is now enforcing that view as of NCTE's view and root cause for this litigation and the NCTE is responsible for interim order by which the commerce graduates were denied admissions in PTET test by interim order of this Court.

(48) Therefore, the writ petition of the petitioner is partly allowed with a direction to the respondent-NCTE:-

(A) to overhaul their own working first before overhauling system of teacher education. This court constrained to observe that Shri Shardindu had submitted the affidavit in S.B.Civil Contempt Petition No.56/2004 to mislead this Court and wrongly projected that the NCTE has considered the representation of the petitioner and of Shri Jitendra Sharma and thereafter issued direction to JNV University, Jodhpur and the Coordinator, PTET and to the State. Said Shri Shardindu, Chairman, NCTE in his affidavit dated 30.5.2005 admitted that he filed the affidavit in the contempt petition only on the basis of the "action taken by the office of Northern Regional Committee of NCTE, Jaipur" which shows that he misled this Court. It is clear from the facts mentioned above that Shri Shardindu himself is personally responsible for this third round of litigation and he has shown that he failed to discharge duties for which he has been appointed. The NCTE without application of mind and without knowing reason for their establishment gave threats of action against the JNV University, Jodhpur and the Coordinator, PTET if their subsequent stand is taken to be correct. If final stand of the NCTE is as given out in the affidavit of the Chairman of NCTE dated 30.5.2005 is accepted as correct then that stand is

contrary to the object of achieving planed and coordinated development of the teacher education system throughout the country. Therefore, copy of this order required to be sent to the Ministry of Education for their consideration and action by appropriate authority against Shri Shardindu, Chairman, NCTE. This Court is not proceeding to take action against Shri Shardindu, Chairman, NCTE because in the facts, the department will be the appropriate authority to enquire into the matter and take action so that instead of punishing a person, the system may be corrected. It will be relevant to mention here that though Shri Shardindu, Chairman, NCTE is not party by name but he has been given full opportunity to explain about his conduct and also has been given opportunity to explain about his earlier affidavit filed in contempt petition, which he admitted to be a wrong affidavit.

(B) that the commerce graduates shall be eligible for admission in B.Ed. course for the current year only and the stay order granted by this Court on 25.2.2005 is vacated, The NCTE (apex body) is directed to consider and take steps to achieve the object for which the NCTE has been established by the National Council for Teacher Education Act, 1993 and prepare a plan to coordinate for development of the teacher education system throughout the country with the help of material and the consultations with the State Government authorities, Universities and

educational institutions which may be relevant and help the NCTE to take an independent and considered plan for development of teachers education system for the India and to avoid inconsistencies. The respondents NCTE is further directed to take a decision whether allowing the commerce graduates in B.Ed. course in Rajasthan is required to be continued and if so whether commerce graduates in other States can be denied the same opportunities which are available to commerce students of Rajasthan ? If it is permissible as per the norms of the NCTE, whether any step is needed or any corrections are needed and if needed then the NCTE may frame a scheme for parity of eligibility for different States. The decision about commerce graduates in the State of Rajasthan shall be taken by the NCTE at its highest level within a period of four months from the date of order so that dispute does not survive for the next year in the entrance examination.

(49) In view of the discussion, the petitioner is also entitled for cost of Rs.25,000/- from Shri Shardindu, Chairman, NCTE as because of his stand only, the petitioner was compelled to file the contempt petition no.56/2004 and the present writ petition believing that petitioner's stand has been accepted by the NCTE.

(PRAKASH TATIA),J